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BY HAND DELIVERY

Jeff S. Jordan, Esq.
Federal Election Commission
999 E Street, NW
Washington, DC 20463

Re: MUR 5743

Dear Mr. Jordan:

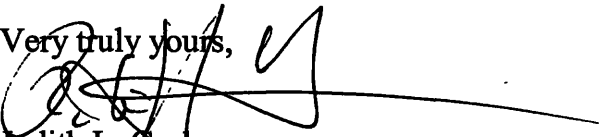
We are writing on behalf of EMILY's List and Judy Lichtman, as treasurer with respect to the above-referenced MUR. We are writing to confirm, per the conversation Rebecca Gordon had last week with Ms. Collins of your office, that the Commission understands that OH Women Vote! is a project of EMILY's List, not a separate entity, and that for purposes of this MUR the two will be referred to collectively in correspondence from this office as "EMILY's List."

As Ms. Collins agreed, the Commission should consider all correspondence filed in this matter on behalf of EMILY's List to be filed on behalf of OH Women Vote! as well. This includes, but is not limited to, the Designation of Counsel and request for extension of time to respond we filed last month.

Likewise, as Ms. Collins verified, we understand and are writing to confirm that the requested extension was granted as to both EMILY's List and OH Women Vote!.

Thank you for your attention to this matter. Please do not hesitate to call us should you have further questions.

Very truly yours,


Judith L. Conley
Rebecca H. Gordon
Counsel to EMILY's List
and Judy Lichtman, as treasurer

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June 26, 2006

BY HAND DELIVERY

Mr. Lawrence H. Norton
General Counsel
Federal Election Commission
999 E Street NW
Washington, DC 20463

Re: MUR 5743

On behalf of EMILY's List and Judy Lichtman, as Treasurer, and OH Women Vote!, which is a project of EMILY's List (collectively, the "Committee"), this letter is submitted in response to the complaint filed by Thomas Sawyer dated April 27, 2006 (the "Complaint"). The Complaint alleges that certain communications made by the Committee were illegal contributions to Betty Sutton for Congress because the communications were coordinated with the campaign. These allegations are unsupported and false. The Federal Election Commission should find no reason to believe that the Committee violated the Federal Election Campaign Act of 1971, as amended, or the Commission's regulations, and it should dismiss this matter.

I. Facts

A. EMILY's List

EMILY's List was founded in 1985 to elect pro-choice Democratic women to federal, state and local office, and to promote issues of concern to its members and adherents. EMILY's List is committed to recruiting and funding viable women candidates; helping them build and run effective campaign organizations; and mobilizing women voters to help elect progressive candidates across the nation. EMILY's List is registered with the Commission as a non-connected multicandidate political committee.

EMILY's List engages in a variety of activities to support the purposes described above. It frequently solicits contributions from its members for endorsed federal, state and local candidates. It also makes direct contributions to its endorsed candidates. These activities are undertaken by designated staff, volunteers and consultants.

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Through a nationwide project called "Women Vote!", EMILY's List engages in general public communications to encourage support for its candidates and positions among the public at large. Women Vote! is an initiative that integrates research, information technology, and organizing to get out the vote for pro-choice Democratic women candidates and the entire Democratic ticket. This project is active in several different states, including Ohio, where the project is called "OH Women Vote!".

Unlike the Committee's general activities of direct candidate support, Women Vote! is undertaken by employees, consultants and volunteers who are barred, as a matter of policy, from interacting with federal candidates, political party committees, or the agents of the foregoing. These employees, volunteers and consultants are also barred from interacting with others within EMILY's List regarding specified candidates or officeholders, so as to prevent the flow of material information from candidates to the Women Vote! program. EMILY's List implemented and enforces these prohibitions to ensure compliance with the Commission's coordination regulations at 11 C.F.R. Part 109. See Commission Office of General Counsel, First General Counsel's Report, MUR 5506.

B. The Committee's Ohio Activities

When the Complaint was filed, Betty Sutton was a candidate to be the Democratic nominee to the United States Congress for the 13th District in Ohio. She has since won the primary election. Consistent with its general activities of direct candidate support and with the practices described above, the Committee solicited contributions from its members for Sutton's campaign. The campaign paid the Committee for all costs associated with these communications.

Through OH Women Vote!, the Committee also produced and distributed the public communications to which the Complaint refers. These communications were created, developed and distributed completely independently of Betty Sutton and her agents, and in conformance with the Committee policies described above. The Committee staff, volunteers and consultants who were involved in the communications discussed them neither with the Sutton campaign nor with those within the Committee who had contact with the Sutton campaign. The Committee used vendors who were not shared by the Sutton campaign. Those vendors, in turn, acquired information and materials for the communications from public information and sources other than the Sutton campaign. In short, these communications were created entirely without the

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knowledge or input of the Sutton campaign or employees of the Committee with information about the campaign.

II. Legal Analysis

A. Applicable Laws

Federal campaign finance law treats coordinated expenditures by a non-connected committee as in-kind contributions to the candidate or political committee with which they were coordinated. *See* 2 U.S.C. § 441a(a)(7)(B)(i) (2006); 11 C.F.R. § 109.20(b) (2006). The regulations also contain a detailed definition of a "coordinated communication." To meet the definition, communications must meet satisfy at least one of the enumerated "content" standards, and at least one of the enumerated "conduct" standards. *See id.* § 109.21(a)(2)-(3).

The central – and indeed only – question posed by the Complaint is whether the communications meet the conduct standards of § 109.21(d). The Complaint presents no specific facts to demonstrate that the conduct standard was met, and the true facts demonstrate that it was not.

B. Alleged Violation

The Complaint alleges that OH Women Vote!'s mail pieces supporting Sutton were coordinated with the Sutton campaign within the meaning of § 109.21. This allegation is false. The advertisements were created without the knowledge or input of the Sutton campaign. No material information from the Sutton campaign was used to create the advertisements. The specific facts cited by the Complaint in an attempt to show coordination are discussed in more detail below.

1. Photographs Featured in Mail Pieces

The Complaint assumes that because the photographs appearing in the Committee's mailings are similar—or in some cases identical—to those that appear on the Sutton campaign's website, those photographs must have been obtained from the Sutton campaign, with the campaign's "material involvement."

This assumption is fallacious. The Committee obtained the photographs to which the Complaint refers directly from the Sutton campaign's publicly available website without any involvement or knowledge on the part of Ms. Sutton, her campaign or

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any of her agents. While certain of the photographs were altered once they were downloaded to suit the Committee's purposes, all came directly from the Sutton campaign's website. *See* Affidavit of Julie Cutler, attached at Exhibit A.¹

The Complainant has attached, at Exhibits C, E, F, H, and J to the Complaint, photographs taken directly from the Sutton campaign's website that are similar, or even identical, to the photographs featured in the mailings attached at Exhibits A, B, D, G, and I, and claims that these photographs are evidence of the alleged "coordination." However, as the photographs were available in the public domain, and the Committee obtained them from the Sutton campaign's website, these photographs directly undermine the Complaint's charges. As the Commission recently made clear, material obtained from a publicly available source cannot form the foundation of a claim of coordination. *See* Commission, Final Rules on Coordinated Communications, 71 Fed. Reg. 33,190, 33,209 (June 8, 2006).

In short, the Complaint presents no evidence at all of the alleged coordination between the Committee and the Sutton campaign. It draws invalid, unsubstantiated conclusions from the Committee's use of photographs of Ms. Sutton—conclusions that the actual facts of the matter easily disprove.

2. Mail Box

The Complainant's allegation of coordination points to one other fact: that the Committee and the Sutton campaign both used as their mailing addresses P.O. Boxes in a particular UPS store in Akron, Ohio. The Committee does not allege that they shared the same box—simply that each used a box in the same store. As the Complainant surely knows, this is not evidence of coordination between the two entities. It is not evidence that they were working together, or even that they knew of each other.

III. Conclusion

In sum, the Complaint does not allege any facts that, if true, would lead to the conclusion that the Committee's communications were coordinated with the Sutton

¹ The Committee is filing today a facsimile of the affidavit. It will file with the Commission the original, signed and notarized version as soon as it is received.

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campaign. Accordingly, for the reasons set forth above, the Committee respectfully requests that the complaint against it be dismissed.

Very truly yours,

A handwritten signature in black ink, appearing to read "B. Svoboda", written over a horizontal line.

Brian G. Svoboda
Rebecca H. Gordon
Counsel to EMILY's List

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EXHIBIT A

AFFIDAVIT OF JULIE CUTLER

1. My name is Julie Cutler. I am employed by Compass Media Group, a direct mail consulting firm that I co-founded in 1998. Compass Media specializes in creating advocacy mail for progressive organizations.
2. Compass Media undertook a direct mail program on behalf of EMILY's List in early 2006 to help support the candidacy of Betty Sutton in the Democratic primary in Ohio's 13th Congressional District.
3. To my knowledge, neither Betty Sutton, nor her campaign, nor any of her agents requested or suggested that EMILY's List undertake the direct mail program to which I refer in paragraph 2. Neither Betty Sutton, nor her campaign, nor any of her agents made any request or suggestion to me or, to my knowledge, to anyone else at Compass Media about that direct mail program or any of the mail pieces we created for EMILY's List as part of that program.
4. Neither Betty Sutton, nor her campaign, nor any of her agents participated in discussions with me, or, to my knowledge, with anyone else at Compass Media about the direct mail program to which I refer in paragraph 2, or any of the mail pieces we created for EMILY's List as part of that program. To my knowledge, neither Betty Sutton, nor her campaign, nor any of her agents participated in any discussions with EMILY's List about that program.
5. To my knowledge, neither Betty Sutton, nor her campaign, nor any of her agents were involved in decisions regarding any aspect of the direct mail program to which I refer in paragraph 2, or any of the mail pieces we created for EMILY's List as part of that program.
6. I was responsible for obtaining the photographs of Betty Sutton that we used in the direct mail program to which I refer in paragraph 2. I obtained all of these photographs directly from Betty Sutton for Congress's publicly available website. Neither Ms. Sutton, nor her campaign, nor any of her agents, provided me with the photographs or helped me obtain them.
7. Once I obtained the photographs, where necessary, I adjusted them to suit the design of the mail pieces we created, such as by isolating Ms. Sutton in a photograph or cropping a photograph to meet space constraints.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct. Executed on June 26, 2006.

27044154003

Julie Cutler
Julie Cutler

STATE OF Illinois)
County of Cook)

SUBSCRIBED AND SWORN to before me this 26th day of June, 2006.

Hilda Diaz
Notary Public

My Commission Expires:

01-07-10

